

Decision 06-07-024 July 20, 2006

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation into Statements by
SBC Communications, Inc. and SBC Pacific Bell
Regarding Potential Reductions to Service
Quality.

Investigation 02-11-008
(Filed November 8, 2002)

**OPINION GRANTING INTERVENOR COMPENSATION TO
THE UTILITY REFORM NETWORK
FOR SUBSTANTIAL CONTRIBUTIONS TO DECISION 06-01-016**

This decision awards The Utility Reform Network (TURN) \$42,111.78 in compensation for its substantial contributions to Decision (D.) 06-01-016. This represents a decrease of \$323.90 from the amount requested. This proceeding is closed.

I. Background

On November 8, 2002, the Commission issued Order Instituting Investigation 02-11-008 (Order) to determine whether workforce reductions announced by SBC Communications, Inc., (SBC), parent of Pacific Bell Telephone Company dba SBC California (SBC California), had any adverse effect on the quality of service provided by SBC California and SBC Advanced Solutions, Inc. (ASI) to their retail and wholesale customers or on their other obligations as regulated telecommunications carriers.

The Commission preliminarily determined that the scope of this proceeding was (1) to determine the impact of the announced workforce reductions on the ability of SBC California and ASI to serve their retail and

wholesale customers and otherwise meet their regulatory obligations and (2) based on such determinations, to take any steps the Commission may find necessary to address these impacts. The Order stated that the final scope of this proceeding would be determined in one or more scoping rulings to be issued by the Assigned Commissioner. The Order further preliminarily determined this to be a “ratesetting” proceeding and that evidentiary hearings may be necessary.

The Order directed SBC California and ASI to provide verified responses to questions attached to the Order. The Order also directed parties to file comments on whether the Commission should take any steps to protect retail or wholesale service quality, or ensure SBC California and ASI meet their other regulatory obligations. Parties were directed to include in their opening comments any objections regarding: (1) the preliminary determination that evidentiary hearings are required; and (2) the preliminary scope and timetable for this proceeding.

On November 14, 2002, SBC California and ASI jointly filed verified responses to the questions attached to the Order. Thereafter, opening and reply comments were filed by the parties. SBC California also responded to data requests by the Commission’s Division of Ratepayer Advocates (DRA) and the Telecommunications Division (TD).¹

The Assigned Commissioner’s April 10, 2003 scoping memo and ruling (Scoping Ruling) refined and clarified the scope of the proceeding in response to the parties’ comments. It limited the scope to determining what impact the workforce reductions have had or are likely to have on service quality provided

¹ DRA was formerly known as the Office of Ratepayer Advocates.

by SBC California and ASI to their wholesale and retail customers in California. To make this determination, SBC California's and ASI's quality of service to their wholesale and retail customers was to be assessed for the period January 1, 2001 through December 31, 2002 (baseline period). Service quality for the baseline period would then be compared with service quality from January 1, 2003 through December 31, 2004 (test period).

The Scoping Ruling identified service quality measures and data sources that would be used to test changes for both the baseline period and the test period and required SBC California and ASI to provide data to the parties. The Scoping Ruling also provided that the effect of layoffs on service to wholesale customers would be measured by reference to the existing reports required of SBC by the Performance Incentive Plan (PIP). SBC was required to furnish all parties with copies of its PIP reports simultaneously with their delivery to the Commission.

In addition to the above information, SBC California and ASI were required to supply all parties with:

1. a list of jobs, including job titles and descriptions, that have been or will be eliminated as part of the workforce reductions that provided support to SBC California's and ASI's California operations, together with a count of employees laid off for each such job category;
2. a list of jobs, including job titles and descriptions, that have been or will be eliminated by SBC California's affiliate SBC Services, Inc. as part of the workforce reductions, together with a count of employees laid off for each such job category; and
3. the total number of monthly overtime hours worked by SBC California's and ASI's California employees engaged in providing customer service for each month from January 1, 2002 through March 31, 2003.

On August 12, 2003, the Assigned Commissioner, by further ruling, dismissed ASI from this proceeding, identified the test period as January 1, 2003 through December 31, 2003, and provided that SBC California's JPSA filings² would be used to measure service quality and that discovery would conclude on March 30, 2004.

TD reported on August 31, 2005, its analysis of the base year and test year data. While TD found some areas where service quality had declined, it did not find any correlation between reductions in service quality and the SBC California workforce reductions.

On October 21, 2005, the assigned Administrative Law Judge (ALJ) proposed by ruling to close this proceeding based on the TD report. The ruling directed any party who disagreed to explain why it should be kept open. Only TURN filed a response to the ruling. TURN did not object to closing the proceeding, provided the Commission did not conclude that no correlation exists between reductions in service quality and the SBC California workforce reductions.

D.06-01-016 closed the proceeding based on TD's report and the lack of opposition to doing so. The decision noted that the failure to find a correlation does not mean that none exists.

II. Requirements for Awards of Compensation

The intervenor compensation program, enacted in Pub. Util. Code §§ 1801-1812, requires California jurisdictional utilities to pay the reasonable

² D.01-05-087 adopted a Joint Partial Settlement Agreement (JPSA) to which SBC California was a party. The JPSA filings are made pursuant to the JPSA.

costs of an intervenor's participation if the intervenor makes a substantial contribution to the Commission's proceedings. The statute provides that the utility may adjust its rates to collect the amount awarded from its ratepayers. (Subsequent statutory references are to the Public Utilities Code unless otherwise indicated.)

All of the following procedures and criteria must be satisfied for an intervenor to obtain a compensation award:

1. The intervenor must satisfy certain procedural requirements including the filing of a sufficient notice of intent (NOI) to claim compensation within 30 days of the prehearing conference (or in special circumstances, at other appropriate times that we specify). (§ 1804(a).)
2. The intervenor must be a customer or a participant representing consumers, customers, or subscribers of a utility subject to our jurisdiction. (§ 1802(b).)
3. The intervenor should file and serve a request for a compensation award within 60 days of our final order or decision in a hearing or proceeding. (§ 1804(c).)
4. The intervenor must demonstrate "significant financial hardship." (§§ 1802(g), 1804(b)(1).)
5. The intervenor's presentation must have made a "substantial contribution" to the proceeding, through the adoption, in whole or in part, of the intervenor's contention or recommendations by a Commission order or decision. (§§ 1802(i), 1803(a).)
6. The claimed fees and costs are reasonable (§ 1801), necessary for and related to the substantial contribution (D.98-04-059), comparable to the market rates paid to others with comparable training and experience (§ 1806), and productive (D.98-04-059).

For discussion here, the procedural issues in Items 1-4 above are combined, followed by separate discussions on Items 5-6.

III. Procedural Issues

The first prehearing conference in this matter was held on February 18, 2003. TURN timely filed its NOI on March 20, 2003. In its NOI, TURN asserted financial hardship.

Section 1802(b)(1) defines a “customer as: A) a participant representing consumers, customers or subscribers of a utility; B) a representative who has been authorized by a customer; or C) a representative of a group or organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential or small business customers. In this case, TURN is a customer as defined in paragraph C because it is authorized pursuant to its bylaws to represent the interests of consumers, a portion of whom are residential customers.

On March 28, 2003, ALJ Bemserderfer ruled that TURN is a customer pursuant to § 1802(b)(1)(C), and meets the financial hardship condition pursuant to § 1802(g). TURN filed its request for compensation on March 14, 2006, within 60 days of D.06-01-016 being issued.³ In view of the above, we find that TURN has satisfied all the procedural requirements necessary to make its request for compensation.

IV. Substantial Contribution

In evaluating whether a customer made a substantial contribution to a proceeding we look at several things. First, did the ALJ or Commission adopt one or more of the factual or legal contentions, or specific policy or procedural recommendations put forward by the customer? (See § 1802(i).) Second, if the customer’s contentions or recommendations paralleled those of another party,

did the customer's participation materially supplement, complement, or contribute to the presentation of the other party or to the development of a fuller record that assisted the Commission in making its decision? (See §§ 1802(i) and 1802.5.) As described in § 1802(i), the assessment of whether the customer made a substantial contribution requires the exercise of judgment.

In assessing whether the customer meets this standard, the Commission typically reviews the record, composed in part of pleadings of the customer and, in litigated matters, the hearing transcripts, and compares it to the findings, conclusions, and orders in the decision to which the customer asserts it contributed. It is then a matter of judgment as to whether the customer's presentation substantially assisted the Commission.⁴

Should the Commission not adopt any of the customer's recommendations, compensation may be awarded if, in the judgment of the Commission, the customer's participation substantially contributed to the decision or order. For example, if a customer provided a unique perspective that enriched the Commission's deliberations and the record on a matter of great technical difficulty and public interest, the Commission could find that the customer made a substantial contribution. With this guidance in mind, we turn to the contributions TURN claims it made to the proceeding.

In its comments on the ALJ ruling proposing to close the proceeding, TURN stated that it did not object so long as the decision did not find that no

³ No party opposes the request.

⁴ D.98-04-059, 79 CPUC2d, 628 at 653.

correlation exists between the layoffs and a decline in service quality. In response to TURN's recommendation, we noted in D.06-01-016 that TD's failure to find a correlation does not mean that none exists.

Since this proceeding resulted in a decision that closed the proceeding, no party had an opportunity to present exhibits or testimony. Therefore, we cannot determine TURN's contributions from the decision except as noted above.

TURN, working closely with DRA, made recommendations on the metrics that should be used to measure any decline in service quality. The Scoping Ruling adopted most of the service quality measures and data proposed jointly by TURN and DRA. In addition, TURN actively participated in the prehearing conference and workshop, filed comments and responded to motions. For all of the above reasons, we find TURN made a substantial contribution to our resolution of this proceeding.

V. Reasonableness of Requested Compensation

TURN requests \$42,435.68 as follows.

Requested Compensation

Attorney Fees:

William Nusbaum	(2003)	54.00 hours @ \$340/hr	=	\$18,360.00
	(2005)	3.25 hours @ \$400/hr	=	\$ 1,300.00
Christine Mailloux	(2002)	2.50 hours @ \$275/hr	=	\$ 687.50
	(2003)	2.25 hours @ \$300/hr	=	\$ 675.00
Robert Finkelstein	(2002)	3.00 hours @ \$365/hr	=	\$10,095.00
	(2003)	1.00 hours @ \$340/hr	=	\$ 340.00
	(2005)	1.00 hours @ \$395/hr	=	\$ 395.00

Attorney Fees for Preparing Intervenor Compensation Request:⁵

William Nusbaum	(2003)	1.50 hours @ \$170/hr	=	\$ 255.00
	(2005)	7.50 hours @ \$200/hr	=	\$ 1,500.00

Expert Consultant Fees:

Regina Costa	(2002)	44.00 hours @ \$200/hr	=	\$8,800.00
	(2003)	15.25 hours @ \$215/hr	=	\$3,278.75

JBS Energy, Inc (Outside Consultant) Fees:

Gayatri Schilberg	(2002)	5.54 hours @ \$130/hr	=	\$ 720.20
	(2003)	22.01 hours @ \$140/hr	=	\$3,081.40
	(2005)	8.70 hours @ \$165/hr	=	\$1,435.50
Expenses				\$ 512.33
Total				\$42,435.68

In general, the components of this request must constitute reasonable fees and costs of the customer's preparation for and participation in a proceeding that resulted in a substantial contribution. The issues we consider to determine reasonableness are discussed below.

A. Hours and Costs Related to and Necessary for Substantial Contribution

We first assess whether the hours claimed for the customer's efforts that resulted in substantial contributions to Commission decisions are reasonable by determining to what degree the hours and costs are related to the work performed and necessary for the substantial contribution.

⁵ Billed at half the hourly rate.

TURN documented its claimed hours by presenting a daily breakdown of the hours spent by each attorney or consultant, accompanied by a brief description of each activity. The hourly breakdown reasonably documents the total hours spent.

As discussed above, TURN made a substantial contribution to this proceeding. In its calculations, TURN attributed 2.89 hours of Gayatri Shilberg's hours in 2002 to 2003. Therefore, we grant compensation for the requested hours with this correction.

B. Market Rate Standard

We next take into consideration whether the claimed fees and costs are comparable to the market rates paid to experts and advocates having comparable training and experience and offering similar services. In Resolution ALJ-184, we set forth principles and guidelines for setting intervenor's hourly rates for work performed in 2004. D.05-11-031 set forth the principles and guidelines for 2005, and generally does not authorize increases above previously approved rates.

All of the hourly rates requested by TURN, with one exception described below, have previously been approved and we adopt them here.⁶

TURN seeks an hourly rate of \$400 for work performed by Nusbaum in 2005. In D.05-04-014, we approved a rate of \$365 for Nusbaum for 2004 work. D.05-11-031 generally does not authorize increases for 2005 above previously approved 2004 rates. In D.06-04-036, we adopted a rate of \$365 for Nusbaum for 2005 work, and we adopt it here.

⁶ See D.02-11-017, D.03-01-074, D.03-06-010, D.03-08-041, D.04-12-054, D.05-04-031, and D.06-04-012.

C. Productivity

D.98-04-059 directed customers to demonstrate productivity by assigning a reasonable dollar value to the benefits of their participation to ratepayers. The costs of a customer's participation should bear a reasonable relationship to the benefits realized through their participation. This showing assists us in determining the overall reasonableness of the request.

The Commission initiated this investigation because it had reason to believe the workforce reductions could adversely impact service quality. The benefit to ratepayers was in determining whether service quality was adversely impacted, and taking any necessary corrective action. If adverse impacts were identified, the ratepayers would benefit from the corrective action. If none were identified, as in this instance, the ratepayers benefited from the assurance that no adverse impacts were found. Thus, the ratepayers benefited from the investigation regardless of the outcome. In this proceeding, TURN incurred costs related to the investigation that contributed to the outcome. The fact that no correlation was found does not detract from the benefit to ratepayers. Therefore, we find TURN's participation in the investigation was productive.

D. Direct Expenses

The itemized direct expenses submitted by TURN include costs for: copying, postage, and telephone, and total \$512.33. These expenses are commensurate with the work performed, and we find them reasonable.

VI. Award

As set forth in the following table, we award TURN \$42,111.78.

AWARD

Attorney Fees:

Nusbaum	(2003)	54.00 hours @ \$340/hr	= \$18,360.00
	(2005)	3.25 hours @ \$365/hr	= \$ 1,186.25
Mailloux	(2002)	2.50 hours @ \$275/hr	= \$ 687.50
	(2003)	2.25 hours @ \$300/hr	= \$ 675.00
Finkelstein	(2002) ⁷	3.00 hours @ \$340/hr	= \$ 1,020.00
	(2003)	1.00 hours @ \$365/hr	= \$ 365.00
	(2005)	1.00 hours @ \$395/hr	= \$ 395.00

Attorney Fees for preparing Intervenor Compensation Request:⁸

Nusbaum	(2003)	1.50 hours @ \$170/hr	= \$ 255.00
	(2005) ⁹	7.50 hours @ \$182.50/hr	= \$ 1,368.75

Expert Consultant Fees:

Costa	(2002)	44 hours @ \$200/hr	= \$ 8,800.00
	(2003)	15.25 hours @ \$215/hr	= \$ 3,278.75

IJS Energy, Inc (Outside Consultant) Fees:

Schilberg	(2002) ¹⁰	8.43 hours @ \$130/hr	= \$ 1,095.90
	(2003)	19.12 hours @ \$140/hr	= \$ 2,676.80
	(2005)	8.70 hours @ \$165/hr	= \$ 1,435.50
Expenses			<u>\$ 512.33</u>
Total Award			\$42,111.78

⁷ In its calculation, TURN erroneously used the 2002 rate for 2003, and the 2003 rate for 2002.

⁸ Billed at half the hourly rate.

⁹ These hours were actually incurred in early 2006. However, TURN treats them as 2005 hours.

¹⁰ In its calculation, TURN erroneously attributed 2.89 2002 hours to 2003.

Consistent with previous Commission decisions, we order that interest be paid on the award amount (at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release H.15) commencing on May 28, 2006, the 75th day after TURN filed its compensation request, and continuing until full payment of the award is made. The award is to be paid by SBC California, the respondent in this proceeding.

We remind all intervenors that Commission staff may audit their records related to this award and that intervenors must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. TURN's records should identify specific issues for which it requested compensation, the actual time spent by each employee or consultant, the applicable hourly rate, fees paid to consultants, and any other costs for which compensation was claimed.

VII. Waiver of Comment Period

This is an intervenor compensation matter. Accordingly, as provided by Rule 77.7(f)(6) of our Rules of Practice and Procedure, we waive the otherwise applicable 30-day comment period for this decision.

VIII. Assignment of Proceeding

Dian M. Grueneich is the Assigned Commissioner, and Jeffrey P. O'Donnell is the assigned ALJ in this proceeding.

Findings of Fact

1. TURN has satisfied all the procedural requirements necessary to claim compensation in the proceeding.
2. TURN made a substantial contribution to D.06-01-016, as described herein.

3. TURN's requested hourly rates, as adjusted herein, and related expenses are reasonable when compared to the market rates for persons with similar training and experience.

4. The total of the reasonable compensation is \$42,111.78.

5. The appendix to this opinion summarizes today's award.

Conclusions of Law

1. TURN has fulfilled the requirements of Pub. Util. Code §§ 1801-1812, which govern awards of intervenor compensation, and is entitled to intervenor compensation for its claimed compensation, as adjusted herein, incurred in making substantial contributions to D.06-01-016.

2. TURN should be awarded \$42,111.78 for its contributions to D.06-01-016.

3. Per Rule 77.7(f)(6), the comment period for this compensation decision may be waived.

4. This order should be effective today so that TURN may be compensated without further delay.

5. This proceeding should be closed.

O R D E R

IT IS ORDERED that:

1. The Utility Reform Network (TURN) is awarded \$42,111.78 as compensation for its substantial contributions to Decision 06-01-016.

2. Within 30 days of the effective date of this decision, Pacific Bell Telephone Company dba SBC California shall pay TURN the total award. Payment of the award shall include interest at the rate earned on prime, three-month commercial paper as reported in Federal Reserve Statistical Release H.15, beginning

May 28, 2006, the 75th day after the filing date of TURN's request for compensation, and continuing until full payment is made.

3. The comment period for today's decision is waived.
4. Investigation 02-11-008 is closed.

This order is effective today.

Dated July 20, 2006, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
Commissioners

APPENDIX**Compensation Decision Summary Information**

Compensation Decision:	D0607024	Modifies Decision? N
Contribution Decision(s):	D0601016	
Proceeding(s):	I0211008	
Author:	ALJ O'Donnell	
Payer(s):	Pacific Bell Telephone Company dba SBC California	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
TURN	3/14/06	\$42,435.68	\$42,111.78	N	Arithmetic errors and different hourly rate

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
William	Nusbaum	Attorney	TURN	\$340	2003	\$340
William	Nusbaum	Attorney	TURN	\$400	2005	\$365
Christine	Mailloux	Attorney	TURN	\$275	2002	\$275
Christine	Mailloux	Attorney	TURN	\$300	2003	\$300
Regina	Costa	Attorney	TURN	\$200	2002	\$200
Regina	Costa	Attorney	TURN	\$215	2003	\$215
Robert	Finkelstein	Attorney	TURN	\$340	2002	\$340
Robert	Finkelstein	Attorney	TURN	\$365	2003	\$365
Robert	Finkelstein	Attorney	TURN	\$395	2005	\$395
Gayatri	Schilberg	Economist	TURN	\$130	2002	\$130
Gayatri	Schilberg	Economist	TURN	\$140	2003	\$140
Gayatri	Schilberg	Economist	TURN	\$165	2005	\$165

(END OF APPENDIX)